

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

SPRING VALLEY BANK,	:	APPEAL NOS. C-120705
		C-120706
Plaintiff-Appellant,	:	TRIAL NOS. A-1102762
		A-1102684
vs.	:	
THOMAS ANTHONY CARTER,	:	
Trustee of the Doris Ann Carter Trust,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee,	:	
and	:	
AH & A PROPERTIES, LLC,	:	
and	:	
THOMAS O. MILLER,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Spring Valley Bank (“Spring Valley”) appeals the judgment of the trial court entered in favor of defendant-appellee Thomas Carter, trustee of the Doris Ann Carter Trust (“Carter”), in these consolidated foreclosure actions.

Spring Valley, the mortgagee for properties located on Desoto Drive and Yellowstone Drive (the “Properties”), accepted deeds to the Properties in lieu of

foreclosure after the mortgagor, AH & A Properties, LLC, had defaulted. After the deed transfer, Spring Valley recorded releases of its mortgages, not knowing at the time that Carter held a blanket mortgage on the Properties. Spring Valley then filed these foreclosure actions, requesting relief from mistake for filing the releases. The trial court determined that Spring Valley was not entitled to relief from mistake because Spring Valley had failed to exercise due care by not conducting a title search. The trial court granted summary judgment in favor of Carter.

In a single assignment of error, Spring Valley argues that the trial court erred in granting summary judgment in favor of Carter and determining that Spring Valley was not entitled to relief from mistake. We review the grant of summary judgment under Civ.R. 56(C) de novo. *State ex rel. Phillips Supply Co. v. City of Cincinnati*, 1st Dist. No. C-120168, 2012-Ohio-6096, 985 N.E.2d 257, ¶ 16. In arguing for equitable relief, Spring Valley relies primarily on two cases, which are factually distinguishable. *First Natl. Bank of Pennsylvania v. Pollock Inn Restoration Assn.*, 7th Dist. No. 96 CA 98, 1999 Ohio App. LEXIS 2956, and *Marshall v. Ebling*, 70 Ohio App.145, 45 N.E.2d 318 (11th Dist.1942). In *First National Bank*, the mortgagor agreed that it had been erroneously released from its obligations under the mortgage. *First Natl. Bank of Pennsylvania* at *8. In *Marshall*, the mortgagor had told the mortgagee prior to transferring a deed in lieu of foreclosure that no other mortgages had encumbered the property, and a title report discovered among the mortgagee's belongings after his death had failed to disclose another mortgage lien. *Marshall* at 152-153.

We agree with the trial court's determination that Spring Valley is not entitled to relief from mistake, and that Spring Valley does not hold a mortgage on the Properties. Summary judgment in favor of Carter was proper.

We affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., FISCHER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on May 15, 2013
per order of the court _____.
Presiding Judge